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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/817,621  | 04/03/2004  | Larry V. Weathers    | 1130                | 2485             |
| 23545   | 7590        | 10/21/2005           | EXAMINER            |                  |
| KATHLEEN M HARLESTON<br>THE HARLESTON LAW FIRM<br>909 TALL PINE ROAD<br>MT PLEASANT, SC 29464 |             |                      | OKEZIE, ESTHER O    |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3652                |                  |

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                                 |  |
|------------------------------|-------------------------------|---------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/817,621 | Applicant(s)<br>WEATHERS ET AL. |  |
|                              | Examiner<br>Esther O. Okezie  | Art Unit<br>3652                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-24 is/are pending in the application.
- 4a) Of the above claim(s) 4,7-12 and 20-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,13-19,23 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

Applicant's amendment filed 8/04/2005 has been considered but is moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1,2,6,13,19,24 are rejected under 35 U.S.C. 102(b) as being anticipated by Scheidecker.
2. Re claim 1, Scheidecker discloses a potato masher capable of pushing leaves or other debris into a trash container, comprising: a substantially planar head portion (12) and a mount portion (14) connected at one end to a side of the head portion and oriented substantially perpendicularly to the side of the head portion, the mount portion being generally cylindrical in shape and comprising an open opposite end that is insertable over an end of a handle; wherein the head portion is formed as a grate (fig 5).
3. Re claim 2, at least one generally circular screw hole (20) extending transversely through the mount, and at least one screw (21) insertable in the at least one screw hole and in at least one corresponding similarly sized hole extending transversely through the handle (figs 1 and 2).

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4. Re claim 6, the head portion is generally rectangular in shape (fig 5).

1. Re claim 13, (a) substantially planar head portion (12); and (b) a brace (15) connected on one side to a substantially planar underside of the head portion; and (c) a mount portion (11) connected to an opposite side of the brace, the mount portion being generally cylindrical in shape and comprising an open end for receiving an end of a handle (17).

2. Re claim 19, (a) substantially planar head portion (12); and (b) a brace (15) connected on one side to a substantially planar underside of the head portion; and (c) a mount portion (11) connected to an opposite side of the brace, the mount portion being generally cylindrical in shape and comprising an open end for receiving an end of a handle (17); wherein the head is formed as a grate (fig 5).

5. Re claim 24, wherein a longitudinal axis of the mount portion is angled in relation to a longitudinal axis of the head portion (fig 1).

6. Claims 1,5,13-15,19,24 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayward.

7. Re claim 1, Hayward discloses a vegetable masher capable of pushing leaves or other debris into a trash container, comprising: a substantially planar head portion (1) and a mount portion (2) connected at one end to a side of the head portion and oriented substantially perpendicularly to the side of the head portion, the mount portion being generally cylindrical in shape and comprising an open opposite end that is insertable over an end of a handle; wherein the head portion is formed as a grate (fig 1).

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8. Re claim 5, the head portion is generally circular in shape (fig 1).
3. Re claim 13, (a) substantially planar head portion (1); and (b) a brace (4) connected on one side to a substantially planar underside of the head portion; and (c) a mount portion (2) connected to an opposite side of the brace, the mount portion being generally cylindrical in shape and comprising an open end for receiving an end of a handle (C).
9. Re claim 14, wherein the brace comprises four triangular-shaped brace arms (4) each extending out from a central longitudinal axis of the brace (see figs 1-3).
10. Re claim 15, wherein the brace portion is generally conical in shape, and comprises a base (see inner portion of paddle members 4; fig. 2) attached to the head portion, and a frustum (2) attached to the first, open end of the open end mount portion, and wherein a longitudinal axis of the brace is aligned with a longitudinal axis of the open-ended mount portion (figs 1 and 2).
4. Re claim 19, (a) substantially planar head portion (1); and (b) a brace (4) connected on one side to a substantially planar underside of the head portion; and (c) a mount portion (2) connected to an opposite side of the brace, the mount portion being generally cylindrical in shape and comprising an open end for receiving an end of a handle (C); wherein the head is formed as a grate (fig 1).
11. Re claim 24, wherein a longitudinal axis of the mount portion is angled in relation to a longitudinal axis of the head portion (fig 1).
12. Claims 16,17,23 are rejected under 35 U.S.C. 102(b) as being anticipated by Roi.

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5. Re claim 16, Roi discloses a vegetable masher capable of pushing leaves or other debris into a trash container, comprising: a substantially planar head portion (I) a brace (G) connected on one side to a substantially planar underside of the head portion; and a mount portion (see fig 3, portion above handle shaft1) connected to an opposite side of the brace, the mount portion being generally cylindrical in shape and comprising an open end for receiving an end of a handle (M); wherein the brace portion is generally conical in shape, and comprises a base attached to the head portion, and a frustum attached to the first, open, end of the open-ended mount portion (see fig 2), and wherein a longitudinal axis of the brace is aligned with a longitudinal axis of the open-ended mount portion; and wherein the brace further comprises a plurality of spaced apart, similarly sized brace apertures (P) extending through the frustum (figs 2,3).
13. Re claim 17, wherein the head portion is generally circular in shape (fig 1).
6. Re claim 23, wherein the substantially planar head portion is angled with respect to a longitudinal axis of the handle (fig. 3)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roi in view of Scheidecker. Roi discloses a circular head portion (I). Scheidecker discloses a

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rectangular head portion (12). It would have been obvious to make the head portion rectangular. Applicant has disclosed both circular and rectangular head portions and has not disclosed that a rectangular head portion provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art would have expected Applicant's invention to perform equally well with a circular or rectangular head portion because both would work equally well in packing, pushing, or mashing materials.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1,2,5,6,13-19,23,24 have been considered but are moot in view of the new ground(s) of rejection as described above. Scheidecker, Hayward, and Roi all disclose vegetable mashers which are capable of packing debris because these devices disclose the structural limitations as claimed and are inherently capable of pushing, mashing, or squashing, or packing vegetables as well as other objects in a container as shown in figure 1 of Applicant's disclosure.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO 10/13/05



**EILEEN D. LILLIS**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600